

ACQUISITION OF CIVIL-SERVICE STATUS BY CERTAIN
JUDICIARY EMPLOYEES

MARCH 5 (legislative day, JANUARY 29), 1951.—Ordered to be printed

Mr. PASTORE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany S. 216]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 216) to amend section 631b of title 5, United States Code, by adding a new subsection, to be cited as subsection (c), having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

STATEMENT

This legislation would confer a classified civil-service status upon secretaries and law clerks to justices and judges of the Supreme Court and other courts of the United States, provided that such employees are separated from their posts involuntarily, without prejudice, after having served 4 years, and provided further that the employee obtains a transfer from his or her position with the justice or judge within 1 year. The proposed legislation does not impair any right of retransfer provided for under civil-service laws or regulations. Before obtaining such a civil-service status the employee must pass a noncompetitive examination prescribed by the United States Civil Service Commission.

The act applies to secretaries and law clerks to justices and judges of the United States. Under the definition set out in section 451 of title 28, United States Code (62 Stat. 907), this would include the following courts: United States Supreme Court, United States courts of appeal, the United States district courts, including the District Courts of the United States for the Districts of Hawaii and Puerto Rico, the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court, and any court created by act of Congress the judges of which are entitled to hold office during good behavior. Courts in which the judges serve a fixed term such as the Municipal Court of Appeals and the Municipal Court of the District of Columbia and some Territorial courts, would not be affected.

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This legislation is urged by the Judicial Conference of the United States, which conference points out that only the secretaries and law clerks of 305 justices or judges would be affected, assuming that such employees in offices of all of these 305 judges were involuntarily separated at the same time and, of course, assuming that such employees could otherwise qualify. It is the expressed opinion of the Judicial Conference that only a small proportion of such employees would seek the benefits of the act, and in this opinion the committee concurs.

This measure is designed to give the same privilege as was given to certain legislative employees under Public Law 880 of the Seventy-sixth Congress (54 Stat. 1213, sec. 2 (b)), which reads, in part, as follows:

That from and after the effective date of this Act any person who shall have served for four years as a secretary, clerk, or assistant clerk to a Senator, Representative, Delegate, or Resident Commissioner, or as a clerk or assistant clerk to a standing committee of the Senate or House of Representatives, or as a clerical employee of the Senate or House of Representatives, and whose separation from the service is involuntary and without prejudice, shall acquire, upon passing such suitable noncompetitive examination as the Civil Service Commission may prescribe, a classified civil-service status for transfer to a position in the classified civil service notwithstanding any contrary provisions of the civil-service laws or regulations: *Provided*, That any individual who may hold such a position in the legislative branch must obtain such transfer within one year from the date of separation, and nothing in this Act shall be construed to impair any right of retransfer provided for under civil-service laws or regulations made thereunder.

The committee feels that upon grounds of comity the relatively small number of secretaries and clerks in the offices of justices and judges of the said courts should have the same privilege now enjoyed by a much larger number, who are legislative employees, under Public Law 880 of the Seventy-sixth Congress.

Secretaries and law clerks of justices and judges of the United States courts are appointed by the judges themselves, and such employees do not have civil-service status. Most of these secretaries and some of the law clerks serve long periods with the justice or judge, in many cases such service corresponding with the term of the judge. Upon the death, resignation, or retirement of the jurist in question, the employee is frequently in an unfortunate position, without reemployment rights in the Government but faced with the necessity of seeking active employment at an age when placement in industry or business is not easy. Added to this is the fact that the employee has acquired, in many instances, valuable experience and training which can be utilized by the executive branch of the Government to advantage. The situation with reference to law clerks is somewhat different in that the usual though not universal practice is for judges to keep their law clerks over shorter periods, some jurists employing young men fresh from the law schools, with frequent turn-over. Of course, these would not be affected unless their tenure was four or more years. So, the effect of the legislation is to make it more applicable to secretaries than law clerks.

It is impossible to make an accurate statement as to the number affected or the exact cost or saving, but it is reasonable to say that the enactment of this legislation will not effect additional cost to the Government and possibly effect a small saving through the reemployment of technically trained personnel in the judicial field.

No report has been received on S. 216 from any Federal agency, but on a similar but not identical bill in the Eighty-first Congress (S. 549), designed to accomplish the same objective, the report of the

Civil Service Commission was adverse on the ground that it was an invasion of the merit system and that of the Director of the Budget, while noncommittal, called attention to the comity that would exist with the enactment of this legislation with the privilege now given to legislative employees. The Comptroller General reported favorably on S. 549, Eighty-first Congress.

CHANGES IN EXISTING LAW

In compliance with the amendment to Rule XXIX of the Standing Rules of the Senate set forth in Senate Resolution 95, Eighty-first Congress, first session, changes in existing law made by the bill (S. 216) as reported are shown as follows: (New matter is printed in italics; existing law in which no change is proposed is shown in roman.)

AN ACT Extending the classified executive civil service of the United States (Public Law 880, 76th Cong., approved November 26, 1940, 54 Stat. 1211, as amended; 5 U. S. C., sec. 631b)

SEC. 2. (a) The incumbent of any office or position which is covered into the classified civil service under the provisions of section 1 of this Act shall not thereby acquire a classified civil-service status, except (1) upon a finding by the Civil Service Commission on the basis of the personal record of the incumbent that such incumbent has served with merit for not less than six months immediately prior to the date such office or position was covered into the classified civil service; and (2) upon passing such suitable noncompetitive examination as the Commission may prescribe: *Provided*, That any such incumbent shall be given only one such noncompetitive examination: *Provided further*, That any such incumbent who fails to pass the noncompetitive examination provided in his case shall be separated from the service not later than six months after the Commission advises the appointing officer that such employee has failed.

The appointment of any person occupying any position covered into the apportioned civil service in the District of Columbia under the provisions of section 1 of this Act shall be charged to the apportionment of his State. As used in this section, "State" includes a Territory and the District of Columbia.

(b) That from and after the effective date of this Act, any person who shall have served for four years as a secretary, clerk, or assistant clerk to a Senator Representative, Delegate, or Resident Commissioner, or as a clerk or assistant clerk to a standing committee of the Senate or House of Representatives, or as a clerical employee of the Senate or House of Representatives, and whose separation from the service is involuntary and without prejudice, shall acquire, upon passing such suitable noncompetitive examination as the Civil Service Commission may prescribe, a classified civil-service status for transfer to a position in the classified civil service notwithstanding any contrary provisions of the civil-service laws or regulations: *Provided*, That any individual who may hold such a position in the legislative branch must obtain such transfer within one year from the date of separation, and nothing in this Act shall be construed to impair any right of retransfer provided for under civil-service laws or regulations made thereunder. In the case of an individual who shall have held such a position in the legislative branch for at least two years and who shall have been separated from such position for the purpose of entering the military or naval service, such individual shall be deemed, for the purposes of this subsection, to have held such position during the period within which he shall have served in the military or naval forces.

(c) *From and after the date of approval of this Act, any person who shall have served for four years as a secretary, law clerk, or secretary and law clerk, to any justice or judge of the United States, and whose separation from the service is involuntary and without prejudice, shall acquire, upon passing such suitable noncompetitive examination as the Civil Service Commission may prescribe, a classified civil-service status for transfer to a position in the classified civil service, notwithstanding any contrary provisions of the civil-service laws or regulations; but any individual who may hold such a position in the judicial branch must obtain such a transfer within one year from the date of separation and nothing in this Act, as amended (U. S. C., 1946 ed., title 5, secs. 631a, 631b, 632, 635, 669, 681-684), shall be construed to impair any right of retransfer provided for under civil-service laws or regulations made thereunder.*

